IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11976 of 2001
with
SPECIAL CIVIL APPLICATION No.11977 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HAJRABEN MOHAMMEDBHAI MUSANI
Versus
JETPUR NAGAR PALIKA

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Appearance:
1. Special Civil Application No. 11976 of 2001
MR NAVIN K PAHWA for Petitioner No. 1
MR RR TRIVEDI for Respondent No. 1
MR KAMAL TRIVEDI Additional Advocate General with
MR AD OZA GP with Mr. AY KOGJE, AGP for Respondents No. 2-3

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CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 07/03/2002

ORAL JUDGEMENT

As similar questions of law and facts involved in

both the petitions, I intend to dispose of both these petitions by this common order. Rule. Mr. A.Y. Kogje, learned AGP waives service of Rule on behalf of respondent Nos. 2 and 3. Heard Mr. Pahwa, learned advocate for the petitioner, Mr. Umesh Trivedi, learned advocate for the respondent no. 1 and Mr. Kamal Trivedi, Additional Advocate General for the respondent Nos. 2 and 3. During the hearing I was taken through the petition and the documents attached thereto and the reply affidavit filed by Shri Mansukhlal J. Vaghera, Chief Officer of the Jetpur Navagadh Nagarpalika, Jetpur on behalf of respondent no. 1.

2. The petitioner has approached this court for necessary direction that the respondent authority may not demolish the cabins of the petitioners situated at Kanakia Plot, Rajkot Road, Nr. Main Gate Bus Stand, Jetpur and the petitioners may be permitted to carry out their business on the said cabins. It is the case of the petitioners that the land in question where the cabins have been placed given on lease by respondent no. 1 Nagarpalika and for which, the petitioner has also placed reliance upon the receipts issued by the Nagarpalika having received the rent from the petitioner upto the period of December, 2000 and the respondent authority has no right to remove the said cabins considering that the said cabins have been encroached upon by the petitioner. In para 4, it is the case of the petitioner that though the petitioners are legal tenants of the cabins of the nagarpalika and the nagarpalika has also accepted the rent/taxes, the petitioners cannot be considered as encroacher upon the land and it is the case of the petitioner that the petitioners came to know that the respondent authority has taken decision to demolish the cabins without giving an opportunity, considering that the said occupation is illegal and petitioners have encroached upon the property illegally and considering this back ground, the petitioner has approached this Court. By recording the statement of the advocate that the cabins of the petitioners does not cause any hinderance to the traffic, this Court has issued notice to the respondents and prayer for not to demolish the cabins was granted. Thereafter, the matter was adjourned from time to time and interim relief was extended from time to time.

3. An affidavit-in-reply is filed by Shri Vaghera, Chief Officer of the first respondent and as found from the reply affidavit, it is the case of the municipality that they have not passed any Resolution nor issued any notice for removal of the cabins of the petitioners and

further, that the land in question is belonging to the Municipality and no case is made out and therefore, the petition is required to be dismissed. As found further from the affidavit-in-reply, it transpires that the land in question is of municipality and land is given on lease under agreement. However, it is the case of the Municipality that the petitioners have violated the condition of the agreement for which, the Municipality is entitled to take steps. It is also found from the reply affidavit that before approaching this court, the petitioner has moved the authority by making representation.

4. Mr. Kogje, learned AGP makes a statement that the Government has not initiated any proceedings to remove the cabins occupied by the petitioners and further that as per the affidavit-in-reply filed by the Municipality, even the Municipality also has not passed any Resolution or issued notice to remove the cabins of the petitioner.

5. In view of above, it is clear that the petitioners have approached this court merely on apprehension and there was no threat at present for which the petitioners cabins are likely to be removed. It is very clear from the affidavit filed by the Chief Officer that under agreement of lease, the petitioner is occupying the cabins and as the municipality has not taken any steps to remove the cabins and considering that the petitioners have not encroached land, this court is of the view that the petitioner has approached this Court merely on apprehension, for which, this court is not required to entertain these petitions only on this ground alone. Accordingly, both the petitions are disposed of. Rule is made absolute in both the petitions. Interim relief granted earlier is vacated in both the petitions. However, there shall be no order as to costs. D.S. Permitted.

(D.K.Trivedi,J.)
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